

Appl. No. 10/782,806
In re Van Der Meulen, J.
Reply to Final Office Action of Oct. 19, 2005

REMARKS/ARGUMENTS

The Examiner is thanked for the Final Official Action dated October 19, 2005 and the telephone interview of January 9, 2006. This request for reconsideration is intended to be fully responsive thereto.

Claims 1-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Cohen et al. (USP 6,020,546) in view of Enhoffer et al. (USP 6,271,449). The applicant respectfully disagrees.

The Examiner concedes that Cohen does not disclose the set of clave blocks having assorted (different) volumes. On the other hand, Enhoffer fails to disclose the set of clave blocks having substantially equal exterior dimensions but different volumes of the open cavities formed therewithin.

By contrast, Enhoffer teaches a single clave having a tubular body. Enhoffer does disclose that the thickness of annular wall 12 may be modified to produce various sound qualities and pitches, and that the dimensions of sounding chamber 20 may also be modified to produce various sound qualities and pitches. However, as argued by the Applicant's representative during the telephone interview of January 9, 2006, nowhere in the specification Enhoffer teaches or

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suggests the set of clave blocks having substantially equal exterior dimensions and different volumes of the open cavities therewithin. Thus, even if the combination of and modification of Cohen and Enhoffer suggested by the Examiner could be made, the resulting musical instrument still would lack the set of clave blocks having equal exterior dimensions and different volumes defined solely by the solid material of the clave blocks.

For these reasons, Applicant respectfully submits that the Section 103(a) rejection of claims 1- 8 has been misplaced, and requests withdrawal of the same. In the event that the Examiner maintains this rejection of claims 1- 8 in a future written communication, the Examiner is requested to point out with specificity where the prior art teaches the claimed set of clave blocks having substantially equal exterior dimensions but different volumes of the open cavities therewithin.

Moreover, MPEP § 2143.01 requires that there must be some suggestion or motivation, either in the prior art references or in the knowledge generally available to one of ordinary skill in the art, to modify or combine teachings of the prior art. However, the Examiner fails to prove as to why one having ordinary skill in the art would have found the claimed invention to be obvious in light of the teachings of the prior art.

Therefore, the rejection of claims 1-8 under 35 U.S.C. 103(a) is improper.

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It is respectfully submitted that claims 1-8 define the invention over the prior art of record and are in condition for allowance, and notice to that effect is earnestly solicited. Should the Examiner believe further discussion regarding the above claim language would expedite prosecution they are invited to contact the undersigned at the number listed below.

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